



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0145]

RIN 1625-AA00

Safety Zone, Barnegat Inlet; Barnegat Light, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard has established a safety zone in Barnegat Inlet from March 7, 2014 to November 31, 2014 around the Barnegat Inlet north jetty repair project. The Army Corps of Engineers has contracted with Agate Construction to repair the damage to the north jetty that was caused by Hurricane Sandy in October 2012. The presence of work barges in the channel reduces the width of the navigable portion of Barnegat Inlet, making it too narrow for vessels to safely pass each other within the inlet. This regulation is necessary to provide for the safety of life on the navigable waters of Barnegat Inlet and is intended to restrict traffic movement to protect mariners from hazards associated with the north jetty repair operations.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until November 31,

2014. For purposes of enforcement, actual notice will be used from the date the rule was signed, March 7, 2014, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This rule will be enforced until November 31, 2014 unless cancelled earlier by the Captain of the Port.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2014-0145]. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Veronica Smith, Chief Waterways Management Division, Sector Delaware Bay, U.S. Coast Guard; telephone (215) 271-4851, e-mail Veronica.L.Smith@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

A. Regulatory History and Information

The Coast Guard is issuing this rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to protect the maritime public. The presence of Agate Construction's barges in the narrow inlet poses a threat to maritime traffic and a safety zone is needed to reduce congestion in the waterway. In this case, waiting for a comment period to run would be contrary to the public interest of protecting life and property. In addition, publishing an NPRM is impracticable because the U.S. Army Corps of Engineers did not provide sufficient notice to the Coast Guard to allow for a comment period prior to the commencement of the work.

Notice to the local commercial fishing community was given on February 19, 2014 in a meeting with the Coast Guard, Army Corps of Engineers, and Agate Construction. Additionally, the Coast Guard is conducting outreach to recreational boaters by providing information to local marinas and boating organizations and by outreach through the U.S. Coast Guard Auxiliary.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register as any delay encountered in this regulation's effective date would be contrary to public interest because immediate action is needed to provide for the safety of vessels navigating in Barnegat Inlet while repairs are being conducted on the north jetty.

B. Basis and Purpose

From March 7, 2014 to November 31, 2014 Agate Construction will be working under contract for the Army Corps of Engineers to conduct repairs to the north jetty of Barnegat Inlet. Due to the close proximity of the north jetty to the navigable portion of the inlet, the presence of work vessels within the navigable channel, and the resulting reduction of the width of the navigable area to approximately 140 feet, this rule is required in order to safely facilitate operations and protect both life and property on the navigable waterways of Barnegat Inlet in respect to commercial and recreational marine activities.

C. Discussion of the Final Rule

The Coast Guard is establishing a temporary safety zone in the waters of Barnegat Inlet in Barnegat Light, NJ from March 7, 2014 to November 31, 2014, unless cancelled earlier by the Captain of the Port once all operations are completed. The safety zone will restrict more than one vessel at a time from transiting within Barnegat Inlet. Additionally, diving, swimming, fishing, and other recreational activities are prohibited within the safety zone at all times. The safety zone will encompass an area bounded on the Northwest of the inlet by a line drawn from position 39°46'02"N, 074°06'00"W to 39°45'52"N, 074°06'14"W, on the Southeast by a line drawn from position 39°45'33"N, 074°05'24"W, to 39°45'26"N, 074°05'34"W, and bounded on the Northeast and Southwest by the Barnegat Inlet jetties. During the period that the safety zone is in effect, all vessels not responsible for jetty repair will be required to pass through the inlet one at a time and will be prohibited from mooring, anchoring, or remaining in the zone, unless specifically authorized by the Captain of the Port, Delaware Bay or her designated representative. Individuals engaged in activities in the water, including but not limited to diving, swimming, and fishing, are prohibited from participating in those activities within the safety zone. Those persons authorized to transit through the safety zone shall proceed at the minimum speed

necessary to maintain steerage and shall abide by all directions provided by the Captain of the Port, Delaware Bay, or her designated representative, in order to ensure that they do not endanger themselves or others within Barnegat Inlet.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this regulation will restrict vessel movement within Barnegat Inlet, the effect of this rule will not be significant because: (i) the Coast Guard will make extensive notification of the safety zone to the maritime public, via maritime advisories so mariners can alter their plans accordingly; (ii) vessels will be permitted to transit through the safety zone one at a time, and (iii) this rule will only be enforced for the duration of the jetty repair project.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit through Barnegat Inlet from March 7, 2014 to November 31, 2014, unless cancelled earlier by the Captain the Port once all operations are completed. The safety zone will not have a significant impact on a substantial number of small entities for the following reason: vessel traffic will be allowed to pass through the safety zone one vessel at a time. Sector Delaware Bay will issue maritime advisories widely accessible to users of the inlet.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule

would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this

rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR Part 165, applicable to safety zones on the navigable waterways. This zone will temporarily restrict recreational activity and transiting vessel traffic in Barnegat Inlet at Barnegat Light, NJ, for the duration of the Army Corps of Engineers north jetty repair project. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

2. Add § 165.T05-0145, to read as follows

§ 165.T05-0145 Safety Zone, Barnegat Inlet; Barnegat Light, NJ.

(a) Location. The following area is a safety zone: All waters of Barnegat Inlet, Barnegat Light, NJ in an area bounded on the Northwest of the inlet by a line drawn from position 39°46'02"N, 074°06'00"W to 39°45'52"N, 074°06'14"W, on the Southeast by a line drawn from position 39°45'33"N, 074°05'24"W, to 39°45'26"N, 074°05'34"W, and bounded on the Northeast and Southwest by the Barnegat Inlet jetties.

(b) Enforcement period. This rule will be enforced from March 7, 2014 to November 31, 2014, unless cancelled earlier by the Captain of the Port, Delaware Bay once all north jetty repair

operations are completed. Vessel traffic will be notified of safety zone enforcement by a broadcast on VHF channel 16.

(c) Regulations. All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.33 of this part.

(1) Recreational marine activities including but not limited to swimming, diving, and fishing are not permitted within the zone.

(2) All persons and vessels must transit through the safety zone one vessel at a time and may not engage in activity other than transit directly through the inlet unless otherwise authorized by the Captain of the Port or her representative.

(3) All persons or vessels wishing to transit through the safety zone more than one vessel at a time must request authorization to do so from the Captain of the Port or her representative 36 hours prior to the intended time of transit.

(4) Vessels granted permission to transit more than one vessel at a time must do so in accordance with the directions provided by the Captain of the Port or her representative to the vessel.

(5) To seek permission to transit the safety zone more than one vessel at a time, the Captain of the Port, or her representative, can be contacted via Sector Delaware Bay Command Center (215)271-4940.

(6) This section applies to all persons and vessels wishing to transit through the Safety Zone except vessels that are engaged in the following operations:

- (i) Enforcing laws;
- (ii) Servicing aids to navigation; and
- (iii) Emergency response vessels.

(7) Each person and vessel in a safety zone shall obey any direction or order of the Captain of the Port;

(8) No person may board, or take or place any article or thing on board, any vessel in a safety zone without the permission of the Captain of the Port.

(d) Definitions—(1) Captain of the Port means the Commander, Sector Delaware Bay, or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on her behalf.

(e) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

Dated: March 7, 2014

K. MOORE

Captain, U.S. Coast Guard

Captain of the Port Delaware Bay

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Date: 03/21/2014]